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4 Honorable Ronald B. Leighton
5 Trial Date: March 29, 2010
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

Safeco Insurance Company of America, as
subrogee for Donald & Terry Conner,

Plaintiff,
vs.

Sunbeam Products, Inc., a foreign corporation
and The Holmes Group, Inc., a foreign
corporation,

Defendants.

No. 3:08-CV-05759RBL

SAFECO'S REPLY TO
SUNBEAM'S INCOMPLETE
RESPONSES TO SAFECO'S
DISCOVERY

Noted on Motion Calendar:
Friday, December 4, 2009¹

This motion was noted to be heard on November 27, 2009 (Evezich Decl.). Several days before Sunbeam's response to the motion was due, Sunbeam requested, and Safeco agreed, to continue the motion one week. *Id.* This agreement was based upon Safeco's perception that Sunbeam was attempting to completely answer the interrogatories (#6 – 8) and request for production (#2, 5-7 & 16) which were the subject of the motion. *Id.* During the week after Thanksgiving, Sunbeam produced several batches of items responsive to the requested discovery. *Id.*

Safeco's Reply Memorandum In
Support of Motion to Compel

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Tel: 206-576-6900; Fax: 206-624-8241

1 On December 3, 2009, Sunbeam requested that the motion be stricken (it never filed a
2 response to the motion identifying any basis for withholding any documents). *Id.* Safeco
3 stated that it had never received any supplementation of the interrogatories since the motion
4 had been noted and that it needed to have certification that all documents responsive to the
5 request for productions had been produced and none were being withheld on privilege. *Id.*,
6 Exh. 1.

7 Later that day, Sunbeam produced Amended Answers to Interrogatories and Amended
8 Supplemental Production Responses. *Id.*, Exh. 2. However, the responses still asserted
9 privileges and did not fully answer the discovery requests.

10 For instance interrogatory No. 6 requested: For each defense alleged in your Answer,
11 please state:

12 a. The defense;
13 b. All facts supporting the defense;
14 c. The name, business address, and job title of the person(s) you claim may
15 have information tending to support your contention(s);
16 d. description of any documentary or other material tending to support your
17 contention(s) including, but not limited to, pictures, drawings, measurements, diagrams,
18 videotapes, audio tapes, moving pictures, damage estimated, etc.; and,
19 e. The name, address and Job title of the person(s) having care, custody or
20 control of any such documentary or other material tending to support your contention(s).

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26¹ Originally noted to be heard on November 27, 2009.

| <u>Sunbeam's Original Answer:</u> | <u>Sunbeam's Amended Answer:</u> |
|--|--|
| <p>1 Objection. This interrogatory seeks 2 information that is protected by the attorney- 3 client privilege and work product privilege. 4 In addition, this interrogatory is premature. 5 Expert opinions will be disclosed in the 6 manner and at the time required by the 7 Federal Rules of Civil Procedure and the 8 case schedule. Without waiving these 9 objections, the Defendant contends that 10 Terry Conner, Donald Conner and 11 representatives of Safeco Insurance 12 Company of America have supporting 13 information. Additionally, the defendant 14 references and incorporates herein all 15 individuals named in Plaintiff's Initial 16 Disclosures. Investigation Continues. The 17 defendant reserves the right to supplement 18 this answer.</p> | <p>1 Objection. This interrogatory seeks 2 information that is protected by the attorney- 3 client privilege and work product privilege. 4 Without waiving these objections, the 5 Defendant contends that Terry Conner, 6 Donald Conner and representatives of Safeco 7 Insurance Company of America have 8 supporting information. Additionally, the 9 defendant references and incorporates herein 10 all individuals named in Plaintiff's Initial 11 Disclosures. Further, see deposition 12 testimony of Plaintiff(s) deposition testimony 13 of Fire Marshall Heidi Scarpelli, and all expert 14 reports.</p> |

12 Thus, Sunbeam has asserted fifteen answers in its complaint and, in response to a
 13 motion to compel, it has failed to articulate even the most basic answer to this valid discovery
 14 requests. Instead, it forces Safeco to try to discern the factual basis, witnesses, and
 15 documents, that support Sunbeam's defenses. Additionally, Safeco should not be in the
 16 position of trying to ferret out the legal basis of some of Safeco's asserted defenses.
 17

18 Sunbeam provided similar responses to interrogatories No. 7 & 8. In each of them, their
 19 amended responses reiterated the same objections as in the original responses and provided
 20 responses subject to the objections.

21 With regard to the Request for Production of Documents, Safeco believed that it was
 22 being reasonable and making resolution of the outstanding document production issues simple
 23 by asking that Sunbeam certify that all documents responsive to the requests were produced
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 26 Safeco's Reply Memorandum In
 Support of Motion to Compel

1 without withholding documents on the basis of privilege. Instead, Sunbeam stated that it had
2 produced some documents, but each document production provided that documents were
3 being provided "without waiving the objections contained in Defendant's original production."
4 *Id.*, Exh. 2. Sunbeam has neither certified that it has produced or identified all documents
5 responsive to the requests, including those it is withholding on the basis of privilege. Since it
6 never provided a privilege log of withheld documents, Safeco has been unable to determine
7 whether those documents are privileged and, since the non-production of such documents was
8 the subject of this motion, this court should enter an order requiring Sunbeam to fully answer
9 all interrogatories (#6 – 8) and produce all documents responsive to Requests for Production
10 (#2, 5-7 & 16), without withholding any on the basis of privilege, by a date determined by the
11 Court.

13 Dated: December 4, 2009.

14 EVEZICH LAW OFFICES, P.L.L.C.

15 By _____/s/
16 Craig Evezich, WSBA #20957
17 Attorney for Plaintiff Safeco

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1 CERTIFICATE OF SERVICE

2 I hereby certify that on December 4, 2009, I electronically filed the foregoing with the Clerk
3 of the Court using the CM/EDF system which will send notification of such filing to the
4 following:

5 Elizabeth Dietrich Gaukroger
6 egaukroger@perkinscoie.com, mlewis@perkinscoie.com, docketseapl@perkinscoie.com, tdoyal@perkinscoie.com

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11 Todd W. Rosencrans
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13 and I hereby certify that I have mailed by United States Postal Service the document to the
14 following non CM/ECF participants: N/A

15 s/Craig Evezich
16 Craig Evezich, WSBA No. 20957
17 Attorney for Plaintiff
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